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Malaysia News:

Employment Insurance System Bill 2017: The proposed new Employment Insurance System in Malaysia

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System Bill 2017: The proposed new Employment Insurance System in Malaysia

Introduction

On 1st August 2017 the Employment Insurance System Bill 2017 (the "Bill") was tabled in the Parliament. The proposed Bill will provide certain benefits and a re-employment placement program for insured persons in the event of loss of employment.

The Bill covers those employees who are employed for wages under a contract of service or apprenticeship with an employer, whether the contract is expressed or implied or is oral or in writing, on or in connection with the work of any industry specified. According to the Bill, the definition of "industry" includes any business, trade, undertaking, manufacture or calling of employers, and includes any calling, services, handicraft or industrial occupation of employees.

The suggested Bill will supplement the existing legal protections for private sector employees being dismissed without having given cause through any culpable conduct. So far only workplace injuries from employees were covered by the social security system in Malaysia.

Key Aspects of the Bill

The Bill stipulates the establishment of an Employment Insurance System (EIS), intending to provide for termination benefits and to assist with re-employment. The EIS will be administered by the Social Security Organisation (SOCSO).

Entitled to the benefits provided under EIS are employees, who are undergoing a so called voluntary or mandatory separation scheme, force majeure, made redundant due to business restructuring or closure, and those whose employers abscond or become bankrupt. On the contrary, EIS does not apply to employees who lost their employment to voluntarily resignation, expiry of the contract, retirement or misconduct.

Every employer will be obliged, on pain of penalties, to register his industry under the EIS and to register and insure all of its employees.

Both, the employer and the employee will have to contribute 50% each of the amount payable to the EIS. This amount will be calculated based on the monthly wage, capped by MYR 4,000, at a rate of approximately 1.5%.

Generally, employers will not be allowed to reduce the wages of any employee or discontinue or reduce any similar existing benefits solely by reason of their liability for any contribution payable under EIS.

Under the Bill employees can claim a portion of their insured salary for up to six consecutive months during the period when the employee is seeking for a new employment, as well as for training allowance, early re-employment allowance and reduced income allowance.

Remarkably, as it is explicitly stated, any rights conferred under the Bill shall not operate as a bar to any representation for reinstatement of employment under the Industrial Relations Act 1967, any claim for termination or lay- off benefits payment under the Employment Act 1955, the Labour Ordinance of Sabah and the Labour Ordinance of Sarawak and any complaint relating to premature retirement under the Minimum Retirement Age Act 2012. But, as the case may be, the claim for benefits under the Bill shall be hold until the time the employees makes a representation, claim or complaint under other laws has been resolved.

Conclusion

The Implementation of an Employment Insurance System for assisting retrenched employees in the private sector is a novelty in Malaysia. It acts as a social safety net to provide mainly financial benefits for employees within the period of seeking an employment. However, only those employees who lost their employment for reasons beyond their control are covered by this system. Employees who have been dismissed through their own fault or through expiry of their employment contract, remain excluded from the EIS. The proposed deferment of claims for benefits under the Bill until the time other claims have been resolved may contradict the EISs´ idea of immediate assistance. It remains to be seen if this will be revised in the next sitting.

As the Bill faces strong objections from workers and employers, the passing of the Bill, which was initially expected for the sitting on the 10th of August 2017, has been deferred to October 2017. Both parties claim, that the statutory contribution proposed was disproportionate in relation to the actual number of retrenched workers.

However, even though the Bill was strongly objected, it is still expected to be passed this year and come into force on 1st January 2018.

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